

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

**SENATE BILLS NOS. 1210,
1244 & 844**

93RD GENERAL ASSEMBLY

Reported from the Committee on Pensions, Veterans' Affairs and General Laws, April 3, 2006, with recommendation that the Senate Committee Substitute do pass.

5340S.03C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 191.900, 191.905, and 191.910, RSMo, and to enact in lieu thereof seven new sections relating to Medicaid fraud, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 191.900, 191.905, and 191.910, RSMo, are repealed
2 and seven new sections enacted in lieu thereof, to be known as sections 191.900,
3 191.905, 191.907, 191.908, 191.909, 191.910, and 191.914, to read as follows:

191.900. As used in sections 191.900 to 191.910, the following terms
2 mean:

3 (1) "Abuse", the infliction of physical, sexual or emotional harm or
4 injury. "Abuse" includes the taking, obtaining, using, transferring, concealing,
5 appropriating or taking possession of property of another person without such
6 person's consent;

7 (2) "Claim", any attempt to cause a health care payer to make a health
8 care payment;

9 (3) "False", wholly or partially untrue. A false statement or false
10 representation of a material fact means the failure to reveal material facts in a
11 manner which is intended to deceive a health care payer with respect to a claim;

12 (4) "Health care", any service, assistance, care, product, device or thing
13 provided pursuant to a medical assistance program, or for which payment is
14 requested or received, in whole or part, pursuant to a medical assistance
15 program;

16 (5) "Health care payer", a medical assistance program, or any person

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 reviewing, adjusting, approving or otherwise handling claims for health care on
18 behalf of or in connection with a medical assistance program;

19 (6) "Health care payment", a payment made, or the right under a medical
20 assistance program to have a payment made, by a health care payer for a health
21 care service;

22 (7) "Health care provider", any person delivering, or purporting to deliver,
23 any health care, and including any employee, agent or other representative of
24 such a person;

25 (8) **"Knowing" and "knowingly", that a person, with respect to**
26 **information:**

27 (a) **Has actual knowledge of the information;**

28 (b) **Acts in deliberate ignorance of the truth or falsity of the**
29 **information; or**

30 (c) **Acts in reckless disregard of the truth or falsity of the**
31 **information;**

32 (9) "Medical assistance program", any program to provide or finance
33 health care to recipients which is established pursuant to title 42 of the United
34 States Code, any successor federal health insurance program, or a waiver granted
35 thereunder. A medical assistance program may be funded either solely by state
36 funds or by state and federal funds jointly. The term "medical assistance
37 program" shall include the medical assistance program provided by section
38 208.151, RSMo, et seq., and any state agency or agencies administering all or any
39 part of such a program;

40 [(9)] (10) "Person", a natural person, corporation, partnership,
41 association or any legal entity.

191.905. 1. No health care provider shall knowingly make or cause to be
2 made a false statement or false representation of a material fact in order to
3 receive a health care payment, including but not limited to:

4 (1) Knowingly presenting to a health care payer a claim for a health care
5 payment that falsely represents that the health care for which the health care
6 payment is claimed was medically necessary, if in fact it was not;

7 (2) Knowingly concealing the occurrence of any event affecting an initial
8 or continued right under a medical assistance program to have a health care
9 payment made by a health care payer for providing health care;

10 (3) Knowingly concealing or failing to disclose any information with the
11 intent to obtain a health care payment to which the health care provider or any

12 other health care provider is not entitled, or to obtain a health care payment in
13 an amount greater than that which the health care provider or any other health
14 care provider is entitled;

15 (4) Knowingly presenting a claim to a health care payer that falsely
16 indicates that any particular health care was provided to a person or persons, if
17 in fact health care of lesser value than that described in the claim was provided.

18 2. No person shall knowingly solicit or receive any remuneration,
19 including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly,
20 in cash or in kind in return for:

21 (1) Referring another person to a health care provider for the furnishing
22 or arranging for the furnishing of any health care; or

23 (2) Purchasing, leasing, ordering or arranging for or recommending
24 purchasing, leasing or ordering any health care.

25 3. No person shall knowingly offer or pay any remuneration, including any
26 kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in
27 kind, to any person to induce such person to refer another person to a health care
28 provider for the furnishing or arranging for the furnishing of any health care.

29 4. Subsections 2 and 3 of this section shall not apply to a discount or
30 other reduction in price obtained by a health care provider if the reduction in
31 price is properly disclosed and appropriately reflected in the claim made by the
32 health care provider to the health care payer, or any amount paid by an employer
33 to an employee for employment in the provision of health care.

34 5. Exceptions to the provisions of subsections 2 and 3 of this subsection
35 shall be provided for as authorized in 42 U.S.C. Section 1320a-7b(3)(E), as may
36 be from time to time amended, and regulations promulgated pursuant thereto.

37 6. No person shall knowingly abuse a person receiving health care.

38 7. A person who violates subsections 1 to 4 of this section is guilty of a
39 class [D] C felony upon his **or her** first conviction, and shall be guilty of a class
40 [C] B felony upon his **or her** second and subsequent convictions, **and any**
41 **natural person who has been convicted of such violations forever shall**
42 **be excluded from participation as a provider for the medical assistance**
43 **program.** A prior conviction shall be pleaded and proven as provided by section
44 558.021, RSMo. A person who violates subsection 6 of this section shall be guilty
45 of a class C felony, unless the act involves no physical, sexual or emotional harm
46 or injury and the value of the property involved is less than five hundred dollars,
47 in which event a violation of subsection 6 of this section is a class A

48 misdemeanor. **No person convicted of a violation of subsections 1 to 4 of**
49 **this section shall be eligible for parole, probation, conditional release,**
50 **or suspended imposition or execution of sentence until he or she has**
51 **served at least eighty-five percent of any term of imprisonment ordered**
52 **as punishment.**

53 **8. Any natural person who willfully prevents, obstructs, misleads,**
54 **delays, or attempts to prevent, obstruct, mislead, or delay the**
55 **communication of information or records relating to a violation of**
56 **sections 191.900 to 191.910 shall be guilty of a class D felony, and**
57 **forever shall be excluded from participation as a provider for the**
58 **medical assistance program.**

59 [8.] **9.** Each separate false statement or false representation of a material
60 fact proscribed by subsection 1 of this section or act proscribed by subsection 2
61 or 3 of this section shall constitute a separate offense and a separate violation of
62 this section, whether or not made at the same or different times, as part of the
63 same or separate episodes, as part of the same scheme or course of conduct, or as
64 part of the same claim.

65 [9.] **10.** In a prosecution pursuant to subsection 1 of this section,
66 circumstantial evidence may be presented to demonstrate that a false statement
67 or claim was knowingly made. Such evidence of knowledge may include but shall
68 not be limited to the following:

69 (1) A claim for a health care payment submitted with the health care
70 provider's actual, facsimile, stamped, typewritten or similar signature on the
71 claim for health care payment;

72 (2) A claim for a health care payment submitted by means of computer
73 billing tapes or other electronic means;

74 (3) A course of conduct involving other false claims submitted to this or
75 any other health care payer.

76 [10.] **11.** Any person convicted of a violation of this section, in addition
77 to any fines, penalties or sentences imposed by law, shall be required to make
78 restitution to the federal and state governments, in an amount at least equal to
79 that unlawfully paid to or by the person, and shall be required to reimburse the
80 reasonable costs attributable to the investigation and prosecution pursuant to
81 sections 191.900 to 191.910. All of such restitution shall be paid and deposited
82 to the credit of the "Medicaid Fraud Reimbursement Fund", which is hereby
83 established in the state treasury. Moneys in the Medicaid fraud reimbursement

84 fund shall be divided and appropriated to the federal government and affected
85 state agencies in order to refund moneys falsely obtained from the federal and
86 state governments. All of such cost reimbursements attributable to the
87 investigation and prosecution shall be paid and deposited to the credit of the
88 "Medicaid Fraud Prosecution Revolving Fund", which is hereby established in the
89 state treasury. Moneys in the Medicaid fraud prosecution revolving fund may be
90 appropriated to the attorney general, or to any prosecuting or circuit attorney
91 who has successfully prosecuted an action for a violation of sections 191.900 to
92 191.910 and been awarded such costs of prosecution, in order to defray the costs
93 of the attorney general and any such prosecuting or circuit attorney in connection
94 with their duties provided by sections 191.900 to 191.910. No moneys shall be
95 paid into the Medicaid fraud protection revolving fund pursuant to this
96 subsection unless the attorney general or appropriate prosecuting or circuit
97 attorney shall have commenced a prosecution pursuant to this section, and the
98 court finds in its discretion that payment of attorneys' fees and investigative costs
99 is appropriate under all the circumstances, and the attorney general and
100 prosecuting or circuit attorney shall prove to the court those expenses which were
101 reasonable and necessary to the investigation and prosecution of such case, and
102 the court approves such expenses as being reasonable and necessary. The
103 provisions of section 33.080, RSMo, notwithstanding, moneys in the Medicaid
104 fraud prosecution revolving fund shall not lapse at the end of the biennium.

105 [11.] 12. A person who violates subsections 1 to 4 of this section shall be
106 liable for a civil penalty of not less than five thousand dollars and not more than
107 ten thousand dollars for each separate act in violation of such subsections, plus
108 three times the amount of damages which the state and federal government
109 sustained because of the act of that person, except that the court may assess not
110 more than two times the amount of damages which the state and federal
111 government sustained because of the act of the person, if the court finds:

112 (1) The person committing the violation of this section furnished
113 personnel employed by the attorney general and responsible for investigating
114 violations of sections 191.900 to 191.910 with all information known to such
115 person about the violation within thirty days after the date on which the
116 defendant first obtained the information;

117 (2) Such person fully cooperated with any government investigation of
118 such violation; and

119 (3) At the time such person furnished the personnel of the attorney

120 general with the information about the violation, no criminal prosecution, civil
121 action, or administrative action had commenced with respect to such violation,
122 and the person did not have actual knowledge of the existence of an investigation
123 into such violation.

124 [12.] 13. Upon conviction pursuant to this section, the prosecution
125 authority shall provide written notification of the conviction to all regulatory or
126 disciplinary agencies with authority over the conduct of the defendant health care
127 provider.

128 [13.] 14. The attorney general may bring a civil action against any
129 person who shall receive a health care payment as a result of a false statement
130 or false representation of a material fact made or caused to be made by that
131 person. The person shall be liable for up to double the amount of all payments
132 received by that person based upon the false statement or false representation of
133 a material fact, and the reasonable costs attributable to the prosecution of the
134 civil action. All such restitution shall be paid and deposited to the credit of the
135 Medicaid fraud reimbursement fund, and all such cost reimbursements shall be
136 paid and deposited to the credit of the Medicaid fraud prosecution revolving fund.
137 No reimbursement of such costs attributable to the prosecution of the civil action
138 shall be made or allowed except with the approval of the court having jurisdiction
139 of the civil action. No civil action provided by this subsection shall be brought if
140 restitution and civil penalties provided by subsections 10 and 11 of this section
141 have been previously ordered against the person for the same cause of action.

**191.907. 1. Any person may bring a civil action in the name of
2 the state to recover losses that the state suffers from a violation of
3 sections 191.900 to 191.910. In an action brought under this section, a
4 person who violates subsection 1 to 4 of section 191.905 is liable as
5 provided by subsection 11 of section 191.905. The amount of any civil
6 penalty assessed by the court under this section shall be reduced by the
7 amount of any civil monetary penalty which the person establishes that
8 he or she has paid under the laws of the United States for a violation
9 of 31 U.S.C. section 3729, et seq., as long as such violation is based on
10 the same underlying facts upon which the state action was brought. At
11 the time of filing the complaint, the person shall deliver a copy of the
12 complaint and written disclosure of all material evidence and
13 information the person possesses to the state attorney general. The
14 complaint shall be filed in camera, shall remain under seal for at least**

15 one hundred and twenty days, and shall not be served upon the
16 defendant until the court so orders. The attorney general may elect to
17 intervene and proceed with the action within sixty days after it
18 receives both the complaint and the material evidence and
19 information. During the period in which the complaint is under seal,
20 the attorney general may elect to initiate discussions with the accused
21 provider in an attempt to facilitate a resolution of the claim prior to
22 the commencement of judicial proceedings.

23 2. The attorney general may, for good cause shown, move the
24 court for an extension of the time during which the complaint remains
25 under seal, as provided by subsection 1 of this section. Any such
26 motion may be supported by affidavits or other submissions in camera.

27 3. Before the expiration of the one hundred and twenty day
28 period or any extensions obtained under subsection 2 of this section,
29 the attorney general shall:

30 (1) Notify the court and the person initiating the action that it
31 will proceed with the action, in which case the action shall be
32 conducted by the attorney general; or

33 (2) Notify the court that it declines to take over the action, in
34 which case the action shall be dismissed, notwithstanding any objection
35 by the person initiating the action.

36 4. When a person files an action under this section, no person
37 other than the attorney general shall intervene or bring a related
38 action based on the facts underlying the pending action.

39 5. If the attorney general elects to proceed with the action, he or
40 she shall have the primary responsibility for conducting the action, and
41 shall not be bound by any act of the person initiating the action. Such
42 person shall have the right to continue as a party to the action, subject
43 to the limitations set forth in subsection 8 of this section.

44 6. The attorney general may voluntarily dismiss the action
45 notwithstanding the objections of the person initiating the action, but
46 only if that person has been notified of and offered the opportunity to
47 participate in a hearing on the motion to dismiss.

48 7. The attorney general may settle the action, notwithstanding
49 the objections of the person initiating the action, but only if that
50 person has been notified of and offered the opportunity to participate
51 in a hearing on the settlement, and if the court determines that the

52 settlement is fair, adequate, and reasonable under the circumstances.

53 8. Upon a showing by the attorney general that unrestricted
54 participation during the course of the litigation by the person initiating
55 the action would interfere with or unduly delay the attorney general's
56 prosecution of the case, or would be repetitious, irrelevant, or unduly
57 harassing, the court may, in its discretion, impose limitations on the
58 person's participation, such as:

- 59 (1) Limiting the number of witnesses the person may call;
60 (2) Limiting the length of the testimony of witnesses;
61 (3) Limiting the person's cross-examination of witnesses; or
62 (4) Otherwise limiting the participation by the person in the
63 litigation.

64 Upon a showing by the defendant that unrestricted participation
65 during the course of the litigation by the person initiating the action
66 would be unduly harassing, or would cause the defendant undue
67 burden or unnecessary expense, the court may limit the participation
68 by the person in the litigation.

69 9. Upon a showing, conducted in camera, that actions of the
70 person initiating the action during discovery would interfere with the
71 attorney general's investigation or prosecution of a criminal or civil
72 matter, the court may stay the discovery by the person initiating the
73 action for not more than sixty days. The court may extend the stay
74 upon a further showing that the attorney general is pursuing the
75 investigation or proceeding with reasonable diligence and the
76 discovery would interfere with the ongoing investigation or proceeding.

77 10. As an alternative to an action authorized by this section, the
78 attorney general may pursue a violation of sections 191.900 to 191.910
79 through any alternate proceeding available to this state. If the
80 attorney general pursues an alternate proceeding, a person who
81 initiated an action under this section shall have equivalent rights in
82 that proceeding to the rights that the person would have had if the
83 action had continued under this section. Findings of fact and
84 conclusions of law that become final in an alternative proceeding shall
85 become conclusive on the parties to an action under this section. For
86 the purposes of this subsection, a finding or conclusion is final if it has
87 been finally determined on appeal to the appropriate court, if the time
88 for filing an appeal with respect to the finding or conclusion has

89 expired, or if the finding or conclusion is not subject to judicial review.

90 11. If the parties to an action filed under this section prevail in
91 the action, the court shall award the person who initiated such action
92 necessary expenses, costs, reasonable attorney fees, and, based on the
93 amount of effort involved, the court shall award such person twenty to
94 thirty-five percent of the monetary proceeds resulting from the action
95 or any settlement of the claim.

96 12. If the court finds an action under this section to be based
97 primarily on disclosure of specific information that was not provided
98 by the person initiating the action, such as information from a criminal,
99 civil, or administrative hearing in a state or federal department or
100 agency, a legislative report, hearing, audit, or investigation, or the
101 news media, and the attorney general proceeds with the action, the
102 court shall award the person initiating the action no more than fifteen
103 percent of the monetary recovery in addition to reasonable attorney's
104 fees, necessary expenses, and costs.

105 13. If the court finds that the person initiating an action under
106 this section planned, initiated, or participated in the conduct upon
107 which the action is brought, the court may reduce or eliminate, as it
108 considers appropriate, the share of the proceeds of the action that the
109 person would otherwise be entitled to receive. A person who is
110 convicted of criminal conduct arising from a violation of sections
111 191.900 to 191.910 shall not initiate or remain a party to an action
112 under this section and is not entitled to share in the monetary proceeds
113 resulting from the action or any settlement under this section.

114 14. A person other than the attorney general shall not bring an
115 action under this section that is based on allegations or transactions
116 that are already the subject of a civil suit, criminal investigation or
117 prosecution, or an administrative investigation or proceeding to which
118 the state or the federal government is already a party. The court shall
119 dismiss an action brought in violation of this subsection.

120 15. Unless the person is the original source of the information,
121 a person, other than the attorney general, shall not initiate an action
122 under this section based on the public disclosure of allegations or
123 transactions in a criminal, civil, or administrative hearing in a state or
124 federal department or agency, a legislative report, hearing, audit, or
125 investigation, or the news media. The person is the original source if

126 he or she had direct and independent knowledge of the information on
127 which the allegations are based and voluntarily provided the
128 information to the attorney general as part of the filing of an action
129 based on that information under this section.

130 16. The attorney general shall not be liable for any expenses,
131 costs, or attorney's fees that a person incurs in bringing an action
132 under this section. Any amount awarded to a person initiating an
133 action to enforce sections 191.900 to 191.910 is payable solely from the
134 proceeds of the action or settlement.

135 17. If the attorney general initiates an action for a violation of
136 sections 191.900 to 191.910, or assumes control of an action initiated by
137 a person under this section, the attorney general shall be awarded its
138 reasonable attorney's fees, expenses, and costs.

139 18. The attorney general shall establish guidelines for enforcing
140 and implementing the provisions of this section. Such guidelines shall
141 be modeled upon the standards established by the "Guidance on the Use
142 of the Civil False Claims Act in Civil Health Care Matters" issued by the
143 United States Department of Justice on June 3, 1998, including any
144 revisions to the standards. In developing such guidelines, the attorney
145 general may solicit comments from health care providers.

146 19. Venue for an action brought under this section shall be in
147 Cole County.

148 20. An action brought under this section shall not be brought
149 more than five years after the date on which the violation was
150 committed.

151 21. Nothing within this section shall be deemed to alter the
152 statutes of limitations provided in section 516.105, RSMo, or section
153 537.100, RSMo.

191.908. 1. An employer shall not discharge, demote, suspend,
2 threaten, harass, or otherwise discriminate against an employee in the
3 terms and conditions of employment because the employee initiates,
4 assists in, or participates in a proceeding or court action under section
5 191.900 to 191.910. Such prohibition shall not apply to an employment
6 action against an employee who:

7 (1) The court finds brought a frivolous or clearly vexatious
8 claim;

9 (2) The court finds to have planned, initiated, or participated in

10 the conduct upon which the action is brought; or

11 (3) Is convicted of criminal conduct arising from a violation of
12 sections 191.900 to 191.910.

13 2. An employer who violates this section is liable to the employee
14 for all of the following:

15 (1) Reinstatement to the employee's position without loss of
16 seniority;

17 (2) Two times the amount of lost back pay;

18 (3) Interest on the back pay;

19 (4) Compensation for any special damages;

20 (5) Any other relief necessary to make an employee whole.

191.909. 1. By January 1, 2007, and annually thereafter, the
2 attorney general's office shall report to the general assembly and the
3 governor the following:

4 (1) The number of provider investigations due to allegations of
5 violations under sections 191.900 to 191.910 conducted by the attorney
6 general's office and completed within the reporting year, including the
7 age and type of cases;

8 (2) The number of referrals due to allegations of violations under
9 sections 191.900 to 191.910 received by the attorney general's office;

10 (3) The total amount of overpayments identified as the result of
11 completed investigations;

12 (4) The amount of fines and restitutions ordered to be
13 reimbursed, with a delineation between amounts the provider has been
14 ordered to repay, including whether or not such repayment will be
15 completed in a lump sum payment or installment payments, and any
16 adjustments or deductions ordered to future provider payments;

17 (5) The total amount of monetary recovery as the result of
18 completed investigations;

19 (6) The total number of arrests, indictments, and convictions as
20 the result of completed investigations.

21 An annual financial audit of the Medicaid fraud unit within the
22 attorney general's office shall be conducted and completed by the state
23 auditor in order to quantitatively determine the amount of money
24 invested in the unit and the amount of money actually recovered by
25 such office.

26 2. By January 1, 2007, and annually thereafter, the department

27 of social services shall report to the general assembly and the governor
28 the following:

29 (1) The number of medicaid provider and recipient
30 investigations and audits relating to allegations of violations under
31 sections 191.900 to 191.910 completed within the reporting year,
32 including the age and type of cases;

33 (2) Number of medicaid long-term care facility reviews;

34 (3) Number of medicaid provider and recipient utilization
35 reviews;

36 (4) The number of referrals sent by the department to the
37 attorney general's office;

38 (5) The total amount of overpayments identified as the result of
39 completed investigations, reviews, or audits;

40 (6) The amount of fines and restitutions ordered to be
41 reimbursed, with a delineation between amounts the provider has been
42 ordered to repay, including whether or not such repayment will be
43 completed in a lump sum payment or installment payments, and any
44 adjustments or deductions ordered to future provider payments;

45 (7) The total amount of monetary recovery as the result of
46 completed investigation, reviews, or audits;

47 (8) The number of administrative sanctions against medicaid
48 providers, including the number of providers excluded from the
49 program.

50 An annual financial audit of the program integrity unit within the
51 department of social services shall be conducted and completed by the
52 state auditor in order to quantitatively determine the amount of money
53 invested in the unit and the amount of money actually recovered by
54 such office.

191.910. 1. The attorney general shall have authority to investigate
2 alleged or suspected violations of sections 191.900 to 191.910, and shall have all
3 powers provided by sections 407.040 to 407.090, RSMo, in connection with
4 investigations of alleged or suspected violations of sections 191.900 to 191.910,
5 as if the acts enumerated in subsections 1 to 3 of section 191.905 are unlawful
6 acts proscribed by chapter 407, RSMo, provided that if the attorney general
7 exercises such powers, the provisions of section 407.070, RSMo, shall also be
8 applicable; and may exercise all of the powers provided by sections
9 542.271 to 542.296, RSMo, in connection with investigations of alleged

10 **suspected violations of sections 191.900 to 191.910**; and may exercise all of
11 the powers provided by subsections 1 and 2 of section 578.387, RSMo, in
12 connection with investigations of alleged or suspected violations of sections
13 191.900 to 191.910, as if the acts enumerated in subsections 1 to 3 of section
14 191.905 involve "public assistance" as defined by section 578.375, RSMo. The
15 attorney general and his **or her** authorized investigators shall be authorized to
16 serve all subpoenas and civil process related to the enforcement of sections
17 191.900 to 191.910 and chapter 407, RSMo. [In order for the attorney general to
18 commence a state prosecution] For violations of sections 191.900 to 191.910, the
19 attorney general shall **either commence a state prosecution or** prepare and
20 forward a report of the violations to the appropriate prosecuting attorney. Upon
21 receiving a referral, the prosecuting attorney shall either commence a prosecution
22 based on the report by the filing of a complaint, information, or indictment within
23 sixty days of receipt of said report or shall file a written statement with the
24 attorney general explaining why criminal charges should not be brought. This
25 time period may be extended by the prosecuting attorney with the agreement of
26 the attorney general for an additional sixty days. If the prosecuting attorney
27 commences a criminal prosecution, the attorney general or his designee shall be
28 permitted by the court to participate as a special assistant prosecuting attorney
29 in settlement negotiations and all court proceedings, subject to the authority of
30 the prosecuting attorney, for the purpose of providing such assistance as may be
31 necessary. If the prosecuting attorney fails to commence a prosecution and fails
32 to file a written statement listing the reasons why criminal charges should not
33 be brought within the appropriate time period, or declines to prosecute on the
34 basis of inadequate office resources, the attorney general shall have authority to
35 commence prosecutions for violations of sections 191.900 to 191.910. In cases
36 where a defendant pursuant to a common scheme or plan has committed acts
37 which constitute or would constitute violations of sections 191.900 to 191.910 in
38 more than one state, the attorney general shall have the authority to represent
39 the state of Missouri in any plea agreement which resolves all criminal
40 prosecutions within and without the state, and such agreement shall be binding
41 on all state prosecutors.

42 2. In any investigation, hearing or other proceeding pursuant to sections
43 191.900 to 191.910, any record in the possession or control of a health care
44 provider, or in the possession or control of another person on behalf of a health
45 care provider, including but not limited to any record relating to patient care,

46 business or accounting records, payroll records and tax records, whether written
47 or in an electronic format, shall be made available by the health care provider to
48 the attorney general or the court, and shall be admissible into evidence,
49 regardless of any statutory or common law privilege which such health care
50 provider, record custodian or patient might otherwise invoke or assert. The
51 provisions of section 326.151, RSMo, shall not apply to actions brought pursuant
52 to sections 191.900 to 191.910. The attorney general shall not disclose any record
53 obtained pursuant to this section, other than in connection with a proceeding
54 instituted or pending in any court or administrative agency. The access,
55 provision, use, and disclosure of records or material subject to the provisions of
56 42 U.S.C. section 290dd-2 shall be subject to said section, as may be amended
57 from time to time, and to regulations promulgated pursuant to said section.

58 **3. A health care provider shall maintain adequate records**
59 **necessary to fully disclose the nature of the health care for which a**
60 **claim was submitted or payment was received under a medical**
61 **assistance program, or such records as are necessary to fully disclose**
62 **all income and expenditures upon which rates of payment were based**
63 **under a medical assistance program. Upon submitting a claim for or**
64 **upon receiving payment for health care under a medical assistance**
65 **program, a health care provider shall maintain adequate records for at**
66 **least five years after the date on which payment was received, if**
67 **payment was received, or for five years after the date on which the**
68 **claim was submitted, if payment was not received. Any provider who**
69 **fails to maintain adequate records as provided by this subsection shall**
70 **be guilty of a class A misdemeanor.**

71 **4. No person knowingly shall destroy or conceal such records as**
72 **are necessary to fully disclose the nature of the health care for which**
73 **a claim was submitted or payment was received under a medical**
74 **assistance program, or such records as are necessary to fully disclose**
75 **all income and expenditures upon which rates of payment were based**
76 **under a medical assistance program. Upon submitting a claim for or**
77 **upon receiving payment for health care under a medical assistance**
78 **program, a person shall not destroy or conceal any records for five**
79 **years after the date on which payment was received, if payment was**
80 **received, or for five years after the date on which the claim was**
81 **submitted, if payment was not received. Any provider who knowingly**

82 **destroys or conceals such records shall be guilty of a class A**
83 **misdemeanor.**

84 **5.** Sections 191.900 to 191.910 shall not be construed to prohibit or limit
85 any other criminal or civil action against a health care provider for the violation
86 of any other law. Any complaint, investigation or report received or completed
87 pursuant to sections 198.070 and 198.090, RSMo, subsection 2 of section 205.967,
88 RSMo, sections 375.991 to 375.994, RSMo, section 578.387, RSMo, or sections
89 660.300 and 660.305, RSMo, which indicates a violation of sections 191.900 to
90 191.910, shall be referred to the attorney general. A referral to the attorney
91 general pursuant to this subsection shall not preclude the agencies charged with
92 enforcing the foregoing sections from conducting investigations, providing
93 protective services or taking administrative action regarding the complaint,
94 investigation or report referred to the attorney general, as may be provided by
95 such sections; provided that all material developed by the attorney general in the
96 course of an investigation pursuant to sections 191.900 to 191.910 shall not be
97 subject to subpoena, discovery, or other legal or administrative process in the
98 course of any such administrative action. Sections 191.900 to 191.910 take
99 precedence over the provisions of sections 198.070 and 198.090, RSMo, subsection
100 2 of section 205.967, RSMo, sections 375.991 to 375.994, RSMo, section 578.387,
101 RSMo, and sections 660.300 and 660.305, RSMo, to the extent such provisions are
102 inconsistent or overlap.

191.914. Any person who intentionally files a false report or
2 **claim alleging a violation of sections 191.900 to 191.910 shall be guilty**
3 **of a class A misdemeanor. Any person who previously has been**
4 **convicted of making a false report or claim under this section and who**
5 **is subsequently convicted of making a false report or claim under this**
6 **section shall be guilty of a class D felony and shall be punished as**
7 **provided by law.**

✓